

STATE OF MICHIGAN  
COURT OF APPEALS

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DANETTA SIMPSON,

Plaintiff-Appellant,

v

MEMBERSELECT INSURANCE COMPANY,

Defendant-Appellee.

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UNPUBLISHED

November 22, 2011

No. 299658

Wayne Circuit Court

LC No. 09-008559-CK

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

In this insurance coverage dispute, plaintiff Danetta Simpson appeals as of right the trial court's order granting in part defendant MemberSelect Insurance Company's motion for summary disposition and denying her motion for summary disposition. Because the trial court properly granted summary disposition in favor of MemberSelect, we affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

On April 7, 2008, Simpson applied for homeowner's insurance through a MemberSelect agent, Martha Struck. Simpson wrote a check for \$926 to cover the initial payment on the same day. Simpson testified at her deposition that when she wrote the check she "didn't know the status of any money in that account," and that she intended to deposit cash into the account to cover the check. When she went to the bank the next day, a bank clerk told her "that the account was into collection[]" and refused to permit her to deposit money into the account.

On April 12, 2008, Simpson discovered significant water damage to her home and immediately informed MemberSelect. On April 15, 2008, MemberSelect sent Simpson a letter informing her that the initial payment had been dishonored by her financial institution on the ground that "[n]o account" existed. It stated that the check did "not constitute payment for your policy" and, consequently, "*The referenced policy is null and void and therefore, there is no insurance coverage in effect.*"

Simpson sued MemberSelect for breach of contract and violations of the Michigan Uniform Trade Practices Act, MCL 500.2001 *et seq.* Simpson moved for summary disposition under MCR 2.116(C)(10). She argued that her policy remained in effect because MemberSelect did not give her the required 10 days notice prior to cancelling it.

MemberSelect also moved for summary disposition. It argued that no insurance policy existed given that (1) Simpson’s material misrepresentations at the time of her application, specifically her tender of a check drawn on an inactive checking account, entitled it to rescind the policy *ab initio*, and (2) the application for insurance plainly envisioned that no coverage would exist if the applicant supplied a dishonored payment. MemberSelect alternatively urged that no coverage existed because Simpson “failed to disclose the fact that the property had been foreclosed on and was in the redemption period at the time she attempted to obtain homeowner’s insurance.”

The trial court granted MemberSelect’s motion under the rescission theory, but denied its motion as to the insurability of Simpson’s residence. It also denied Simpson’s motion for summary disposition.

This appeal followed.

## II. SUMMARY DISPOSITION

### A. STANDARDS OF REVIEW

This Court reviews de novo a trial court’s decision on a motion for summary disposition. *Robertson v Blue Water Oil Co*, 268 Mich App 588, 592; 708 NW2d 749 (2005). A motion under MCR 2.116(C)(10) tests the factual support for a plaintiff’s claim. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). This Court also reviews de novo the proper interpretation of a contract. *Tenneco, Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 444; 761 NW2d 846 (2008).

### B. ANALYSIS

Although the circuit court did not rely on the insurance application in granting summary disposition, because this argument was properly raised before the trial court, this Court may consider it on appeal. See *Mich Twp Participating Plan v Fed Ins Co*, 233 Mich App 422, 435-436; 592 NW2d 760 (1999).

“Like any other contract, an insurance policy is an agreement between the parties. The primary goal in the interpretation of an insurance policy is to honor the intent of the parties.” *Tenneco, Inc*, 281 Mich App at 444 (citation omitted). A court must accord contractual language its plain and ordinary meaning. *Hastings Mut Ins Co v Safety King, Inc*, 286 Mich App 287, 292; 778 NW2d 275 (2009). “If the contractual language is unambiguous, courts must interpret and enforce the contract as written because an unambiguous contract reflects the parties’ intent as a matter of law.” *Id.*

When applying for her insurance, Simpson signed a “Michigan Homeowners Application Addendum and Authorization.” Immediately below her signature on the addendum appears the following: “A CHECK OR CREDIT/DEBIT CARD WHICH IS NOT HONORED FOR ANY REASON WILL NOT CONSTITUTE PAYMENT. ALL COVERAGE WHICH WOULD OTHERWISE BE PROVIDED PURSUANT TO THIS APPLICATION AND ANY ACTION TAKEN THEREON WILL BE CONSIDERED NULL AND VOID.”

The parties do not dispute that Simpson’s bank refused to honor the check Simpson wrote to cover the initial payment. Under the plain language of the addendum, the bank’s refusal to honor Simpson’s check—without regard to fault or intent—rendered any coverage “null and void.” Given the undisputed evidence that Simpson’s initial payment was dishonored, the trial court should have granted MemberSelect’s motion on that basis.

On appeal, Simpson argues that “[t]he Policy contract language controls the issues of payment and cancellation. The application is extrinsic evidence that is not relevant to these issues.” But Simpson offers no citation to authority to support her claim that we should disregard the terms of the addendum. For that reason, we conclude that she has abandoned this argument on appeal. See *Hughes v Almena Twp*, 284 Mich App 50, 71; 771 NW2d 453 (2009). Further, the addendum is not ambiguous and we will enforce it as written.

The trial court did not err when it granted MemberSelect’s motion, even though it did so for a different reason. See *Hess v Cannon Twp*, 265 Mich App 582, 596; 696 NW2d 742 (2005).

Affirmed.

/s/ Michael J. Kelly  
/s/ Henry William Saad  
/s/ Peter D. O’Connell